

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	Jonathan Stinson
Application No.:	10/037036
Filed:	October 25, 2001
For:	Balloon Expandable Polymer Stent With Reduced Elastic Recoil
Examiner:	Vi X Nguyen
Group Art Unit:	3734

Mail Stop _____
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Docket No.: S63.2B-9919-US01

Application for Patent Term Adjustment, 37 CFR 1.705

The applicant hereby requests reconsideration of the patent term adjustment determination made by the Director and reported in the Determination of Patent Term Adjustment under 35 USC 154 (b), dated 10/03/2008, copy attached.

The Determination of Patent Term Adjustment, mailed 10/03/2008, states the adjustment to date as 740 days. Also attached is the PAIR record showing the basis for this determination. The determination is incorrect.

The application was filed after May 28, 2000 and so is entitled to the benefit of the current version of 35 U.S.C. 154. The determination fails to follow the calculation method required by law as determined in *Wyeth v. Dudas*, 88 USPQ2d 1538 (DC DC 2008), which is controlling law for the issues presented herein.

This Application also constitutes a request that a **Final Determination** be made in accordance with the determination method described herein.

- (1) This request is accompanied by the fee set forth in §37 CFR 1.18(e).
- (2) Statement of the facts involved:

- (i) The correct patent term adjustment and the basis under 37 CFR § 1.702 for the adjustment is as follows:

As of 10/03/2008*:

USPTO delay days	773
Applicant delay days	-33
Non-overlapping	
Three year days	1170
Correct Adjustment	1910

* The three year calculation continues until the issue date. Therefore, when the issue date has been determined a **Final Determination** should be made accounting for the additional number of days in the interval after 10/3/2008 until the issue date.

- (ii) The relevant dates as specified in §§ 1.703(a) through (e) for which an adjustment is sought and the adjustment as specified in § 1.703(f) to which the patent is entitled are explained as follows:

The Office calculation of 740 days fails to recognize any "three years" delay days. As *Wyeth* establishes, this is improper. This application was pending for more than three years as of 10/26/2004, and no time was consumed by continued examination of the application under 35 U.S.C. 132(b); no time was consumed by an interference proceeding under 35 U.S.C. 135(a); no time was consumed by the imposition of a secrecy order under 35 U.S.C. 181; by review by the Board of Patent Appeals and Interferences or a Federal court. All delay in the processing of the application by the Office that was requested by the applicant has already been accounted for.

From and including 10/26/2004 through 10/03/2008, the date of allowance, the number of three years days was **1439** days. There are no applicant delays in this interval. Subtracting the overlap of **269** days (260+109) of USPTO delay falling in this same interval, for which the patent term has already been credited, leaves a balance of **1170** days, which balance should have been added to the **740** days calculated for the adjustment as of the date of the Determination. Thus the total adjustment that should have been shown on the 10/13/2008 Determination of Patent Term Adjustment under 35 USC 154 (b) was **1910** days.

- (iii) The patent is not subject to a terminal disclaimer.

(iv) (A) The applicant does not believe that there are any circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704, other than those already accounted for in the applicant delay days noted above.

All items required under 37 CFR 1.705 having been provided herein, the applicant requests that the Determination of Patent Term Adjustment, mailed 10/03/2008, be corrected to show an adjustment of **1910** days and that a Final Determination be made on the basis of the interval from 10/3/2008 until the issue date.

Respectfully submitted,

VIDAS, ARRETT & STEINKRAUS

Date: December 22, 2008

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10037.036	10/25/2001	Jonathan S. Simon	SG3.2.9919.1.S01	5380
EXAMINER				
NGUYEN, VI X				
ART UNIT		PAPER NUMBER		
3731				

DATE MAILED: 10/03/2008

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Determination of Patent Term Adjustment under 35 U.S.C. 154 (b)
(application filed on or after May 29, 2000)

The Patent Term Adjustment to date is 740 day(s). If the issue fee is paid on the date that is three months after the mailing date of this notice and the patent issues on the Tuesday before the date that is 28 weeks (six and a half months) after the mailing date of this notice, the Patent Term Adjustment will be 740 day(s).

If a Continued Prosecution Application (CPA) was filed in the above-identified application, the filing date that determines Patent Term Adjustment is the filing date of the most recent CPA.

Applicant will be able to obtain more detailed information by accessing the Patent Application Information Retrieval (PAIR) WEB site (<http://pair.uspto.gov>).


Any questions regarding the Patent Term Extension or Adjustment determination should be directed to the Office of Patent Legal Administration at (571)-272-7702. Questions relating to issue and publication fee payments should be directed to the Customer Service Center of the Office of Patent Publication at 1-(888)-786-0101 or (571)-272-4200.

10/037,036





BALLOON EXPANDABLE POLYMER STENT WITH REDUCED ELASTIC RECOIL

Select New Case	Application Data	Transaction History	Image File Wrapper	Patent Term Adjustments	Continuity Data	Published Documents	Address & Attorney/Agent
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Patent Term Adjustment

Filing or 371(c) Date:	10-25-2001	USPTO Delay (PTO) Delay (days):	773
Issue Date of Patent:	-	Three Years:	-
Pre-Issue Petitions (days):	+0	Applicant Delay (APPL) Delay (days):	33
Post-Issue Petitions (days):	+0	Total Patent Term Adjustment (days):	740
USPTO Adjustment (days):	+0	Explanation Of Calculations 	

Patent Term Adjustment History

Date	Contents Description	PTO(Days)	APPL(Days)
10-03-2008	Mail Notice of Allowance		
10-01-2008	Document Verification		
10-01-2008	Notice of Allowance Data Verification Completed		
09-22-2008	Date Forwarded to Examiner		
09-16-2008	Appeal Brief Filed		
09-16-2008	Notice of Appeal Filed		
06-30-2008	Mail Non-Final Rejection	109	
06-23-2008	Non-Final Rejection		
12-08-2007	Appeal Brief Review Complete		
12-08-2007	Date Forwarded to Examiner		
11-13-2007	Appeal Brief Filed		
09-12-2007	Notice of Appeal Filed		
07-13-2007	Mail Final Rejection (PTOL - 326)		
07-05-2007	Final Rejection		
05-03-2007	Date Forwarded to Examiner		
04-23-2007	Response after Non-Final Action		
02-05-2007	Mail Non-Final Rejection		
02-04-2007	Non-Final Rejection		
11-25-2006	Date Forwarded to Examiner		
11-15-2006	Amendment after Final Rejection		
10-11-2006	Mail Final Rejection (PTOL - 326)		
10-02-2006	Final Rejection		
08-03-2006	Date Forwarded to Examiner		
08-01-2006	Response after Non-Final Action		
07-05-2006	Mail Non-Final Rejection		

06-27-2006	Non-Final Rejection	
04-17-2006	Case Docketed to Examiner in GAU	
03-21-2006	Date Forwarded to Examiner	
03-17-2006	Response to Election / Restriction Filed	
03-03-2006	Mail Restriction Requirement	260
03-01-2006	Requirement for Restriction / Election	⬆
12-27-2005	Date Forwarded to Examiner	⬆
02-16-2005	Appeal Brief Filed	⬆
11-29-2005	Miscellaneous Incoming Letter	
12-08-2004	Letter Requesting Interview with Examiner	
12-20-2004	Notice of Appeal Filed	
11-11-2004	Miscellaneous Incoming Letter	
10-05-2004	Mail Final Rejection (PTOL - 326)	4
10-04-2004	Final Rejection	⬆
07-21-2004	IFW TSS Processing by Tech Center Complete	⬆
05-15-2003	Reference capture on IDS	⬆
06-24-2002	Reference capture on IDS	⬆
02-27-2002	Reference capture on IDS	⬆
07-21-2004	Date Forwarded to Examiner	⬆
06-01-2004	Response after Non-Final Action	33
06-01-2004	Request for Extension of Time - Granted	⬆
06-01-2004	Workflow incoming petition IFW	⬆
06-01-2004	Workflow incoming amendment IFW	⬆
01-29-2004	Mail Non-Final Rejection	400
01-28-2004	Non-Final Rejection	⬆
12-04-2003	Case Docketed to Examiner in GAU	⬆
05-15-2003	Information Disclosure Statement (IDS) Filed	⬆
05-15-2003	Information Disclosure Statement (IDS) Filed	⬆
12-16-2002	Case Docketed to Examiner in GAU	⬆
06-24-2002	Information Disclosure Statement (IDS) Filed	⬆
06-24-2002	Information Disclosure Statement (IDS) Filed	⬆
02-27-2002	Information Disclosure Statement (IDS) Filed	⬆
02-27-2002	Information Disclosure Statement (IDS) Filed	⬆
03-16-2002	Case Docketed to Examiner in GAU	⬆
02-01-2002	Application Dispatched from OIPE	⬆
01-31-2002	Application Is Now Complete	⬆
01-16-2002	IFW Scan & PACR Auto Security Review	⬆
10-25-2001	Initial Exam Team nn	⬆